

## Department of Agriculture

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 406.2—Full and Open Competition After Exclusion of Sources

#### 406.202 Establishing or maintaining alternative sources.

The Senior Procurement Executive is authorized to make determinations pursuant to FAR 6.202(a) and sign the determination and findings required by FAR 6.202(b).

### Subpart 406.3—Other Than Full and Open Competition

#### 406.302 Circumstances permitting other than full and open competition.

#### 406.302-70 Otherwise authorized by law.

(a) *Authority.* Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) (the Act) authorizes the Secretary of Agriculture to award contracts, without competition, to further research, extension, or teaching programs in the food and agricultural sciences.

(b) *Limitations.* The use of this authority is limited to those instances where it can be determined that contracting without full and open competition is in the best interest of the Government and necessary to the accomplishment of the research, extension, or teaching program. Therefore:

(1) Contracts under the authority of the Act shall be awarded on a competitive basis to the maximum practicable extent.

(2) When full and open competition is not deemed appropriate, the contracting officer shall make a written justification on a case-by-case basis in accordance with procedures in FAR 6.303 and 6.304.

### Subpart 406.5—Competition Advocates

#### 406.501 Requirements.

(a) The Chief, Procurement Policy Division, Procurement and Property Management, Policy Analysis and Co-

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ordination Center, has been designated as the Competition Advocate for USDA.

(b) Each HCA shall designate a competition advocate for the contracting activity.

## PART 407—ACQUISITION PLANNING

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AUTHORITY: 5 U.S.C. 301 and 40 U.S.C.

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### Subpart 407.1—Acquisition Plans

#### 407.103 Agency-head responsibilities.

Heads of Contracting Activities (HCA's) shall develop procedures to comply with FAR 7.103.

#### 407.170 Advance acquisition plans.

Each HCA shall implement an advance acquisition planning system in accordance with procedures in Departmental Directives (5000 series).

### Subpart 407.3—Contractor Versus Government Performance

#### 407.302 General.

The requirements of FAR subpart 7.3 and OMB Circular A-76 are implemented by Departmental Directives (2100 series).

### Subpart 407.5—Inherently Governmental Functions

#### 407.503 Policy.

(a) HCA's shall establish procedures to ensure that requesting activities

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provide the written determination required by FAR 7.503(e), when submitting requests for procurement of services.

(b) In the event of a disagreement as to whether the functions to be performed are inherently governmental, the HCA may refer the matter to the Senior Procurement Executive (SPE) for resolution. When submitting disagreements to the SPE for resolution the HCA shall provide a summary of the areas of disagreement, supported by the following:

(1) The HCA's assessment of whether the services are "inherently governmental";

(2) The basis for that assessment (include references to the definition and policy in FAR subpart 7.5 and/or Office of Federal Procurement Policy letter 92–1);

(3) A copy of the statement of work; and,

(4) The requesting activity's written determination in accordance with FAR 7.503(e).

(c) Such disagreements shall be resolved prior to issuance of the solicitation.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

**PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

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AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

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**Subpart 408.4—Federal Supply Schedules**

**408.404 Using schedules.**

**408.404–3 Requests for waivers.**

A copy of the request for a waiver and the approval shall be placed in the contract file to support the acquisition of items off schedule.

**Subpart 408.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled**

**408.701 Definitions.**

*Committee Member* is the Presidential appointee representing USDA as a member of the Committee for Purchase from People Who Are Blind or Severely Disabled.

*Organization head* is the head of the contracting activity (HCA), the head of a USDA corporation (as described in 31 U.S.C. 9101), or the head of a USDA staff office.

**408.705 Procedures.**

(a) The organization head shall appoint one person as Javits-Wagner-O'Day Act (JWOD) Advocate to represent the organization and to coordinate the organization's actions with the Committee Member.

(b) JWOD advocates may represent more than one organization. Advocates need not be acquisition officials.

(c) The organization head shall issue and maintain an action plan to promote and enhance the organization's acquisitions from JWOD participating nonprofit agencies.

(d) The action plan shall:

(1) Announce the organization's support for the JWOD Act;

(2) Establish a promotion program for the products and services provided by the JWOD participating nonprofit agencies;